



Kazungu v Tindika t/a Tindika & Company Advocates (Environment and Land Miscellaneous Application E004 of 2025) [2025] KEELC 6111 (KLR) (22 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6111 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E004 OF 2025
FM NJOROGE, J
SEPTEMBER 22, 2025**

BETWEEN

MIKE KAINGU KAZUNGU APPLICANT

AND

**RANDOLPH M TINDIKA T/A TINDIKA & COMPANY
ADVOCATES RESPONDENT**

RULING

1. The taxation reference in this matter has been brought by way of an application dated 17th February 2025. It seeks an order that the taxing master’s decision in the ruling in Malindi Miscellaneous Number E47 of 2024 be set aside and the matter be taxed afresh by this court. In my ruling dated 5th June 2025 in this matter, I stated as follows:

“ 31. Having regard to the contents of the present application, the prayers do not specify the items but ground numbers (b) and (d) set out at the foot of the application identifies the instruction fee as the item that aggrieved the applicant. Thus the only item of the bill of costs in dispute is the instructions fees. It matters not that it appears to be the sole item that appears to have aggrieved the applicant. Even just one item can be the basis for a taxation reference.”

2. That position still obtains even now; the only item under challenge in the bill of costs is the instruction fee.

3. The applicant alleges that the taxing master misdirected herself and acted contrary to the established principles of taxation in assessing the instruction fee at an unjustifiable sum of Kenya Shillings 2,400,000/-. It is alleged that the figure had no basis or documents to support it and that the



- respondent failed to produce the instruction note which would have been prudent in the circumstances considering that his fees were contingent on the value of the property being sold.
4. Secondly, it is alleged that the signature of the applicant on the commission agreement prepared by the respondent and on every other document attached was forged.
 5. The applicant further avers that he was unaware of cases nos ELC Number 77 of 2016 and ELC Miscellaneous Number 49 of 2016 and that the respondent proceeded to act without instructions in those cases, and that the signatures on the pleadings do not belong to the applicant.
 6. On a summary basis, I dismiss all the allegations of forgery in the application because the present taxation reference is not the right forum for trial and determination of that kind of issue; in any event it cannot be tried by way of affidavit.
 7. The only question that remains now is whether the taxing master misdirected herself and acted contrary to the established principles of taxation in assessing the instruction fee at Kenya shillings 2,400,000/-, and whether that sum is unjustifiable.
 8. Item number 1 on the subject Bill of Costs reads as follows: 19th January 2017: To receiving instructions to act for the 2nd plaintiff with regard to the sale of Parcel /Plot Number 404 /III/ Mainland North CR. No 10352 situated at Kikambala Beach at the price of Kshs Kenya shillings 170,000,000/; Amount charged 2,400,000 shillings only; Amount taxed off: nil.
 9. The price of the land is expressly indicated in the bill of costs. It would appear that the value is derived from a commission agreement dated 19th January 2017 executed by the applicant herein on behalf of himself and his co-registered owner Salim Nzangu Bakari as vendor on the one hand, and Rashid Ali Kavuo and 10 other persons as the agents. In that agreement the vendors express their willingness to sell their interest in the title for Kenya shillings 170,000,000/-. The agents on their part are indicated to have found a willing buyer interested to buy the property at Kenya Shillings 170,000,000/-.
 10. I have already indicated that the issue of alleged forgery is not properly before this court for determination in the present reference.
 11. As at the time of the submissions in support of the taxation, the respondent herein indicated that the applicant herein had not denied executing the said agreement and it is my belief that this was a material fact for consideration by the taxing master in carrying out her duties. I have also noted other documents attached including an unexecuted sale agreement between the applicant herein and Brown M.M. Ondego for the sale of the suit property for Kenya Shillings 107,000,000/-. These are matters which the respondent never countered at the taxation stage.
 12. In this court's view these are good indicators of the value of the suit land.
 13. The applicant's submissions before the taxing master were that there is no valuation report showing that the land value is Kenya Shillings 170,000,000/. His insistence was that the value is Kenya Shillings 80,000,000/-.
 14. He presented an argument, which was not reflected in the documents which had been submitted by the respondent, to the effect that the land was subdivided. The argument before the taxing master having stated expressly that the value was Kenya Shillings 170,000,000/- there was no justification for the taxing master to go outside of those documents to establish value. In that regard a valuation report was therefore unnecessary.
 15. I have also considered that there was a consent dated 20th January 2021 authorizing the respondent's law firm to take over ELC Number 77 of 2016 as well as a notice of change of advocates in that very



case. A replying affidavit signed by the respondents sworn and filed on 28th April 2021 was drawn by the respondent's firm and it refers to that case. Much later it appears that submissions dated 17th March 2022 in that case were filed by the respondent's firm.

16. Other documents showed the respondent was involved in ELC Miscellaneous Application Number 49 of 2016 as advocate for the applicant herein.
17. It has not therefore been disproved by the applicant that the value of the land was Kenya Shillings 170,000,000/- respondent acted as Advocate for the applicant in both matters. In any event no items in the bill of costs directly relating to those two court cases, in which it is alleged that the respondent had no instructions to act for the applicant, have been expressly challenged in the reference.
18. The outcome of the foregoing is that I find no error or impropriety of exercise of discretion on the part of the taxing master and the reference brought by way of the Chamber Summons dated 17th February 2025 is hereby dismissed in its entirety.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 22ND DAY OF SEPTEMBER, 2025.

MWANGI NJOROGE

JUDGE

ELC, MALINDI

